Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	))	
High-Cost Universal Service Support	))	WC Docket No. 05-337
Federal-State Joint Board on Universal Service	)))	CC Docket No. 96-45

COMMENTS OF SOUTHEAST TELEPHONE, INC.
AND MOMENTUM TELECOM, INC.

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April 17, 2008

SUMMARY

The Joint Commenters each are wireline competitive local exchange carriers serving residential and small business customers in rural areas and small towns in the southeastern United States. As wireline competitors in higher-cost areas throughout the southeastern U.S., the Joint Commenters have a vital interest in any Commission decision modifying the rules governing the amount of high-cost universal service support provided to competitive ETCs. Moreover, as current and potential providers of broadband services to rural, underserved, and unserved areas, the Joint Commenters have a similar vital interest in any mechanism adopted by the Commission to advance broadband deployment to unserved and underserved geographic areas.

These comments are specifically directed at the tentative conclusions in the *Identical Support Rule NPRM* to (1) eliminate the current "identical support" rule, which provides competitive Eligible Telecommunications Carriers with the same per-line high-cost universal service support amounts that incumbent local exchange carriers receive, and (2) to eliminate competitive ETCs' ability to receive Interstate Access Support. The Joint Commenters also respond to the Commission's proposal in the *Joint Board Comprehensive Reform NPRM* to establish a distinct Broadband Fund, which would be tasked primarily with facilitating construction of facilities for new broadband services to unserved area.

The Joint Commenters show herein that elimination of the identical support rule would penalize wireline competitive ETCs since the proposal to do so is based on the false assumption that wireline competitive ETCs enjoy lower per-line costs than incumbent carriers. If anything, the Commission should either increase support to wireline competitive ETCs to offset the unjustly high prices imposed by the BOCs for local switching or, more properly, bring

such prices down by enforcing the Section 271 obligation on the BOCs to make local switching available at just and reasonable rates.

Further, the Joint Commenters explain that the Commission should not bar competitive ETCs from obtaining Interstate Access Support because to do so would disrupt the balance struck by the Commission in creating that support mechanism. The Joint Commenters show that the Commission is mistaken in its premise that competitive ETCs are not affected by the subscriber line charge caps that apply to incumbent carriers and, thus, it is not the case that competitive ETCs are free to recover their revenues from end users through higher SLC rates.

Finally, the Joint Commenters encourage the Commission to ensure that any rules it adopts to foster broadband deployment in unserved areas be carefully crafted to encourage innovative competitive business models, rather than to expand the current dominant market position of the incumbent ETCs into new markets. The Commission should ensure that all ETCs – including wireline competitive ETCs such as SouthEast and the carrier customers of Momentum – have the same practical access to broadband funds as the incumbent LEC.

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SouthEast Telephone, Inc. (SouthEast") and Momentum Telecom, Inc. ("Momentum") (hereinafter referred to jointly as "Joint Commenters"), through counsel and pursuant to the Order issued by the Federal Communications Commission ("Commission") on March 24, 2008,[1] hereby provide their comments in response to the three Notices of Proposed Rulemaking (collectively, "Notices") regarding the high-cost universal service support program issued by the Commission in the above-captioned proceedings on January 29, 2008.[2]

The Joint Commenters' filing is specifically directed at the tentative conclusions in the *Identical Support Rule NPRM* to (1) eliminate the current "identical support" rule, which provides competitive Eligible Telecommunications Carriers ("ETCs") with the same per-line

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1 *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service,* WC Docket No. 05-337, CC Docket No. 96-45, Order (rel. Mar. 24, 2008).

2 *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) ("*Identical Support Rule NPRM*"); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) ("*Reverse Auctions NPRM*"); *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) ("*Joint Board Comprehensive Reform NPRM*").

high-cost universal service support amounts that incumbent local exchange carriers ("ILECs") receive, and (2) to eliminate competitive ETCs' ability to receive Interstate Access Support ("IAS"). The Joint Commenters also respond to the Commission's proposal in the *Joint Board Comprehensive Reform NPRM* to establish a distinct Broadband Fund, which would be tasked primarily with facilitating construction of facilities for new broadband services to unserved area.[3]

I. BACKGROUND

The three Notices issued by the Commission on January 29, 2008 each address "ways to reform the high-cost universal service program."[4] The *Joint Board Comprehensive Reform NPRM* seeks comment on the Federal-State Joint Board on Universal Service ("Joint Board") recommendation that the Commission make fundamental revisions to the structure of existing Universal Service mechanisms. The Joint Board recommends establishing three separate funds with distinct budgets and purposes.[5] The purpose of the Broadband Fund would primarily be to "disseminat[e] broadband Internet services to unserved areas, with the support being expended as grants for the construction of new facilities."[6] The Mobility Fund would be tasked primarily with disseminating wireless voice services to unserved areas.[7] Finally, the so-called Provider of Last Resort ("POLR") Fund would support wireline carriers who provide this

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3 Over the long term, it is this aspect of the Commission's Notices – *i.e.*, creating rules to foster rural broadband development – that is most critical to the Joint Commenters' business plans and, more importantly, represents the largest potential benefit for the nation's rural residential consumers and small businesses.

4 *Joint Board Comprehensive Reform NPRM*, at ¶ 1.

5 *Joint Board Comprehensive Reform NPRM*, Appendix A (Federal-State Joint Board on Universal Service Recommended Decision), at ¶ 1.

6 *Id.*, at ¶ 12.

7 *Id.*, at ¶ 11.

function.[8] Support under existing programs would be transitioned over a period of years to the new three-fund structure.

The *Identical Support Rule NPRM* seeks comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive ETCs.[9] More specifically, the *Identical Support Rule NPRM* solicits comment on the Commission's tentative conclusion to eliminate the identical support rule and to instead provide support to competitive ETCs based on their own costs of providing the supported services. The *Identical Support Rule NPRM* also seeks comment on the Commission's tentative conclusion that competitive ETCs should no longer receive IAS. The Commission's third Notice – the *Reverse Auctions NPRM* – invites comment on the Commission's tentative conclusion that reverse auctions (a form of competitive bidding) should be used as the disbursement mechanism to determine the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas and seeks comment on how to implement reverse auctions for this purpose.[10]

The Joint Commenters each are wireline competitive local exchange carriers ("CLECs") serving residential and small business customers in rural areas and small towns in the southeastern United States. SouthEast provides retail service in rural Kentucky, leasing wholesale network facilities from ILECs AT&T and Windstream, while deploying its own broadband network. SouthEast is a rural-only carrier, *i.e.,* it does not market its services outside of rural areas in Kentucky. Although Momentum currently provides retail services in Alabama, Mississippi, Louisiana, Kentucky, Tennessee, and Georgia with network facilities leased from AT&T, its long-term plan is to provide wholesale VoIP services to rural cable companies,

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8 *Id.*

9 *Identical Support Rule NPRM*, at ¶ 1.

10 *Reverse Auctions NPRM*, at ¶ 1.

thereby enabling those companies to more fully utilize their broadband networks by offering telephony services in addition to video and Internet access. Although their individual business strategies differ, both SouthEast and Momentum are vitally concerned that federal universal service policies in general – and federal broadband policies in particular – not frustrate the expansion of competition to less dense markets.

In many cases, the competitive local, long distance, and Internet access services offered by SouthEast and Momentum are the only wireline alternatives to the services provided by the ILEC available to residential consumers in the areas served by those carriers. More importantly, each carrier is positioned to play a critical role in bringing advanced broadband services to secondary and rural markets. SouthEast is utilizing the existing copper infrastructure to provide both voice and DSL in segments of the market, while actively deploying its own fiber broadband network in the underserved rural areas of Kentucky too often neglected by the larger service providers.[11] Momentum offers a wholesale VoIP product to enable smaller cable operators (which commonly serve small towns and rural areas) to more fully utilize – and, therefore, more broadly develop – their broadband networks.

As wireline competitors in higher-cost areas throughout the southeastern U.S., the Joint Commenters have a vital interest in any Commission decision modifying the rules governing the amount of high-cost universal service support provided to competitive ETCs. Moreover, as current and potential providers of broadband services to rural, underserved, and unserved areas, the Joint Commenters have a similar vital interest in any mechanism adopted by the Commission to advance broadband deployment to unserved and underserved geographic areas. Indeed, continued access to high-cost support (through the identical support rule and IAS)

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[11] SouthEast is a partner in ConnectKentucky, whose mission is to expand the availability of broadband service throughout the state. *See* www.connectkentucky.org.

for the voice services they provide is a critical factor in the Joint Commenters' ability to continue to affordably deliver broadband services to rural areas. Consequently, the Joint Commenters address their comments to the reform proposals contained in the *Identical Support Rule NPRM* and the tentative conclusions regarding implementation of a new Broadband Fund contained in the *Joint Board Comprehensive Reform NPRM.*[12]

II. THE COMMISSION SHOULD NOT ELIMINATE APPLICATION OF THE IDENTICAL SUPPORT RULE TO WIRELINE ETCs

The stated justification for the Commission's tentative conclusion that the current identical support rule should be eliminated for all competitive ETCs is that this reform is needed "[t]o ensure the sufficiency of the universal service mechanism."[13] The Commission points out that high-cost support provided by the universal service fund has grown rapidly over the past several years and that this growth has been due to increased support provided to competitive ETCs, which receive high-cost support based on the per-line support that the ILECs receive, rather than their own costs.[14] The Commission argues that requiring competitive ETCs to receive high-cost support based on their own costs would "better reflect investment in rural and other high-cost areas of the country, and [would] create[] greater incentives for investment in such areas."[15] The Commission's underlying premise is that competitive ETCs have lower per-line costs than ILECs of providing service in a supported service area.[16]

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12 The Joint Commenters do not take a position on the Commission's proposal to use reverse auctions as the disbursement mechanism to determine the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas.

13 *Identical Support Rule NPRM*, at ¶ 5.

14 *Id.*

15 *Id.*

16 *Id.*, at ¶ 13.

The Commission acknowledges, however, that *wireless* carriers, rather than *wireline* competitive LECs "have received a majority of competitive ETC designations, serve a majority of competitive ETC lines, and have received a majority of competitive ETC support."[17] Indeed, it has been reported that in 2006, 94 percent – $770.5 million out of $820.5 million – of all competitive ETC support went to wireless competitive ETCs.[18] Thus, the "problem" being addressed by the proposal to eliminate the identical support rule is not being "caused" by wireline providers of competitive services.

The premise underlying the Commission's tentative proposal to eliminate the identical support rule is that competitive ETCs' underlying costs of providing service in supported areas deviate from (*i.e.*, are lower than) the ILECs' costs. Competitive wireline ETCs' costs are virtually identical to the ILECs' underlying costs, however, because wireline competitive ETCs typically purchase unbundled network elements ("UNEs") from the ILECs in order to provide supported services.[19] UNEs are priced to reflect the ILECs' underlying costs, plus a reasonable profit. In most cases, the only ILEC-provided network element relied upon by wireline competitive ETCs that is not priced to reflect its underlying costs is local switching,

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17 *Id.*, at ¶ 9.

18 *Id.*, at n. 26, quoting Letter from Jeffrey A. Eisenach, Chairman, Criterion Economics, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, WC Docket No. 05-337, Attach. The Effects of Providing Universal Service Subsidies to Wireless Carriers, at 16-18, App. B (filed Jun. 13, 2007).

19 A carrier that focuses on rural markets, such as SouthEast, bears an additional disadvantage because of the manner in which high-cost support is calculated. The support available to SouthEast is calculated based on AT&T's business plan, which includes a mix of urban, suburban, and rural markets. As a result, the support available in a state such as Kentucky, where SouthEast is deploying its network, is based on AT&T's *average* loops costs (plus other network costs), while SouthEast's loop costs are defined *solely* by the higher loop costs associated with Zones 2 and 3. It is important that the Commission appreciate that by designing its universal service support system to make sense only to a carrier that mimics the BOC's business plan (serving both urban and rural areas), the program disadvantages competitors focused on rural markets. It is critical that the Commission not take any further steps that would distort competition in this manner.

which has been eliminated as a Section 251(c)(3) UNE by the Commission.[20] As a result, today, local switching is priced at what the BOCs label "market rates," despite the absence of any identifiable wholesale market that would constrain its pricing.

Comparing AT&T Switch Cost to Rate Imposed on CLECs

State	AT&T Switch Cost (FCC Cost Model)	CLEC Switch Cost (AT&T Rate)	Percent Increase
Alabama	$2.60	$11.77	352%
Florida	$1.59	$11.87	645%
Georgia	$1.70	$10.08	493%
Kentucky	$1.86	$10.69	474%
Louisiana	$1.81	$12.14	570%
Mississippi	$2.11	$12.68	501%
North Carolina	$1.77	$13.24	648%
South Carolina	$2.28	$13.28	482%
Tennessee	$2.41	$10.40	331%
Average	$1.89	$11.54	527%

As the Table demonstrates, the rates currently being imposed on CLECs leasing local switching from AT&T to serve residential customers in the Southeast is *more than five times higher* than the cost calculated by the Commission's universal service cost model. Consequently, the Commission's assumption that CLEC costs are below ILEC costs is factually in error.[21]

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20 *See Unbundled Access to Network Elements*; *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533 (2005), *affirmed Covad Communications v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

21 The Joint Commenters note that the cost estimates produced by the Commission's HCPM are consistent with a number of cost studies performed throughout the states and with the Commission's own analysis in the Virginia arbitration. *See In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, DA 02-1731 (rel. Jul. 17, 2002). Consequently, the problem exposed by the above Table – that is, the dramatic difference between AT&T's local switching prices and its costs – is not caused by inaccuracies in

In addition to the fact that elimination of the identical support rule for wireline competitive ETCs is not consistent with the underlying premise for such a change in the rules, elimination of the identical support rule for wireline competitive ETCs would unnecessarily force these carriers to incur significant additional costs to comply with the new rules, thereby potentially creating a chilling effect on their participation in the plan and, thus, their ability to offer supported services in high-cost areas. Wireline competitive ETCs potentially would be compelled to separate their costs, on a geographically-disaggregated basis, into network components consistent with a Commission-adopted system of accounts and to submit such information to the Commission in a manner that complies with the Commission's cost reporting requirements.[22] SouthEast and Momentum, small carriers with limited internal resources, are representative of the type of carriers that would incur these weighty new separation and reporting requirements. With little to be gained by forcing wireline carriers like SouthEast and Momentum to comply with these new obligations, it is difficult to see why they should be penalized by being forced to comply with them.[23]

The Commission points out in the *Identical Support Rule NPRM* that both the Joint Board and the Commission embraced the principle that incumbents' support payments be portable to other ETCs based on their expectation "that competitive ETCs would compete

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the cost modeling process, but is instead a direct result of AT&T pricing its competition out of the market, including rural markets.

22 *Identical Support Rule NPRM*, at ¶¶ 15-18.

23 On the other hand, SouthEast and Momentum would welcome the opportunity to draw the universal service support necessary to offset the high prices imposed AT&T for the lease of its facilities. Consequently, to the extent the Commission requires competitive ETCs to receive support based on their own costs, the Commission must recognize that where those costs are defined by AT&T's commercial agreement prices, support would need to increase substantially.

directly against incumbent LECs and try to take existing customers from them."[24] The Commission further states that "[t]he predictions of the Joint Board and the Commission have proven inaccurate,"[25] since wireless carriers (which have received a majority of competitive ETC designations and receive the overwhelming majority of competitive ETC support):

> do not capture lines from the incumbent LEC to become a customer's sole service provider, except in a small portion of households. Thus, rather than providing a complete substitute for traditional wireline service, these wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service.[26]

The Commission concludes that "[t]his has created a number of serious problems for the high-cost fund, and calls into question the rationale for the identical support rule."[27]

To the extent the Commission is correct that the fact that "the majority of households do not view wireline and wireless services to be direct substitutes"[28] calls into question the rationale for the identical support rule, that potential basis for elimination of the rule in inapplicable to wireline competitive ETCs. Wireline competitive ETCs do in fact provide services that are direct substitutes for the services provided by incumbent LECs. SouthEast and other wireline competitive ETCs compete directly against the incumbent LEC for subscribers' lines and typically do not provide service to households that subscribe to both services and

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24 *Identical Support Rule NPRM*, at ¶ 8.

25 *Id.*, at ¶ 9.

26 *Id.*

27 *Id.*, at ¶ 10.

28 *Id.*

receive support for multiple lines. Thus, there is no basis to call into question the rationale for the identical support rule as it applies to this category of ETC.[29]

In proposing the creation of three separate funds in the *Identical Support Rule NPRM*, the Commission's stated goal is to eliminate the use of "federal universal service support to subsidize competition and build duplicate networks in high-cost areas."[30] In keeping with this goal, the Commission's rules should encourage the participation as competitive ETCs of CLECs which provide substitutable services to consumers in rural and other high-cost areas without duplicating the network facilities the ILECs already have in place. Wireline competitive ETCs such as SouthEast do just that. SouthEast and other wireline competitive ETCs use ILEC-provided facilities (as UNEs and wholesale services) to offer services to residential and small business customers who otherwise would not have a choice in wireline service provider. At the same time, SouthEast is investing in the deployment of both voice and broadband facilities to unserved areas while Momentum is investing in the necessary infrastructure to enable small cable companies to compete.

Thus, in addition to providing consumers in rural and other high-cost areas competitive choice in traditional voice service providers, these carriers are expanding the value and reach of broadband networks into these areas. Clearly, the Commission should not penalize such carriers by eliminating the identical support rule on the false assumption of lower costs. If anything, the Commission should either increase support to wireline competitive ETCs to offset

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29 The Joint Commenters suggest, moreover, that the appropriate question is not whether the rationale underlying the rule remains viable but instead whether the rule is being applied in a manner that is consistent with the goals of the Joint Board and the Commission. If that is the question under consideration, the answer with respect to wireline competitive ETCs is that continued application of the identical support rule remains in harmony with the goals of the federal high-cost support program.

30 *Identical Support Rule NPRM*, at ¶ 35.

the unjustly high prices imposed by the BOCs for local switching or, more properly, bring such prices down by enforcing the Section 271 obligation on the BOCs to make local switching available at just and reasonable rates.

III. THE COMMISSION SHOULD NOT ELIMINATE COMPETITIVE ETCs' ABILITY TO RECEIVE IAS PAYMENTS

In the *Identical Support Rule NPRM*, the Commission proposes to eliminate the ability of competitive ETCs to receive IAS.[31] The Commission points out that IAS was created to maintain the Commission's cap on ILECs' subscriber line charge ("SLC") rates to end users, "while eliminating the implicit support found in common line access charges, imposed by incumbent LECs on interexchange carriers, that previously preserved the lower SLC rates."[32] The Commission appears to endorse the view that because "competitive ETCs' rates generally are not regulated and they are not subject to SLC caps, they are able to recover their revenues from end users and thus have no need to recover additional interstate revenues from access charges or from universal service . . ."[33]

First, the Commission is fundamentally mistaken in its conclusion that competitive ETCs are not affected by the SLC caps that apply to the incumbent LECs. Competitive ETCs do not have market power and must position their rates while fully cognizant of the comparable rates of the carriers with market power, *i.e.*, the incumbent LECs. It is simply not true that the SLC cap on the ILECs does not place a constraint on the pricing of the ILECs' competitors. Although competitive ETCs' SLCs are not capped by the Commission, their SLCs are subject to a *de facto* cap, since the need for competitive ETCs to price their end user services

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31 *Id.*, at ¶ 23.

32 *Id.* (footnote omitted).

33 *Id.*

below the ILECs' in order to attract customers compels them to charge SLCs that are no greater than those of the ILECs.

Second, the Commission's stated rationale for its tentative conclusion that competitive ETCs should be barred from obtaining IAS is directly contrary to the important balance struck by the Commission in creating that support mechanism however. As the Commission stated in adopting the IAS in the *CALLS Order*:

> The CALLS Proposal identifies and removes $650 million of implicit universal service support in interstate access charges, creates an explicit interstate access universal service support mechanism in this amount to replace the implicit support, *and makes interstate access universal service support fully portable among eligible telecommunications carriers* . . . we conclude that this interstate access universal service support mechanism is specific, predictable and sufficient. Moreover, *by making universal service support explicit and portable, the interstate access universal service support mechanism should also encourage competitive entry into high-cost areas.*[34]

Thus, it is clear that a fundamental rationale for the acceptability of the IAS as a universal service support element was that it would be portable, *i.e.,* available to all designated ETCs. In proposing that competitive ETCs no longer qualify for nondiscriminatory access to IAS support, the Commission is proposing to disrupt the balance created in the *CALLS Order* to "provide explicit support that is specific, predictable, and sufficient to ensure that consumers in all regions of the nation have access to telecommunications services at affordable and reasonably comparable rates . . . . *[while] provid[ing] support that is portable among competing carriers – if a competitor serves a supported customer, the competitor will receive the interstate access*

34 *Interstate Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket no. 96-45, 15 FCC Rcd 12962, at ¶ 32 (2000) ("*CALLS Order*") (emphasis supplied).

support for that customer."[35] The Commission should abandon its tentative conclusion and continue to honor the deal struck in the *CALLS Order.*

IV. THE COMMISSION SHOULD ENSURE THAT THE BROADBAND FUND IS COMPETITIVELY NEUTRAL

As mentioned above, the Commission is proposing to establish a Broadband Fund, whose primary task would be to disseminate broadband Internet services to unserved and underserved areas, with the support being expended as grants for the construction of new facilities in those unserved areas.[36] The Joint Commenters caution the Commission that it is essential the fund not favor the ILECs. In other words, the Commission should ensure that all ETCs – including wireline competitive ETCs such as SouthEast and the carrier customers of Momentum – have the same practical access to the Broadband Fund as the incumbent LEC.

The rules ultimately adopted by the Commission have the potential to spur tremendous investment in the construction of broadband networks to unserved areas. These rules should be carefully crafted to encourage innovative competitive business models, rather than to expand the current dominant market position of the incumbent ETCs into new markets. If the Commission follows this recommendation, consumers in rural and other high-cost areas across the country will be the ultimate beneficiaries of innovative broadband products and services.

V. CONCLUSION

For all of the foregoing reasons, the Joint Commenters urge the Commission to retain the identical support rule for wireline competitive ETCs and to retain competitive ETCs'

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35 *Id.*, at ¶ 186 (emphasis supplied).

36 *Joint Board Comprehensive Reform NPRM*, at ¶ 12.

access to IAS. The Joint Commenters also encourage the Commission to ensure that any rules it establishes to govern operation of a Broadband Fund provide competitive ETCs with practical access to the fund.

Respectfully submitted,

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April 17, 2008